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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,749	02/25/2002	Richard Charles Jaworski		7505

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EXAMINER

KERVEROS, JAMES C

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,749

Applicant(s)

JAWORSKI, RICHARD CHARLES

Examiner

JAMES C KERVEROS

Art Unit

2133

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 1-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This is a Final Office Action in response to AMENDMENT filed 10/21/2004, in reply to the prior Office Action mailed 10/7/2004.

Claims 1-15 are pending and presently under examination.

Prior Office Action objections to the Specification, Information Disclosure Statement, and Claims, are withdrawn in view of the corrections made by the Amendment, as required by the Office Action.

Claims rejection under 35 U.S.C. 112, first paragraph and second paragraph, is withdrawn in view of Amendment.

Claim Objections

Claims 1-15 are objected to because of the following informalities:

Independent Claim 1, on line 4, the expression "network" should be changed to "cable network". Also, on line 5, the expression "the Cable Modem Termination System" should be changed to "a Cable Modem Termination System", because of lack of antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Umeuchi et al. (US Patent No: 6,512,747, filed: March 4, 1999).

Regarding independent Claim 1, Umeuchi discloses a method described in the flow chart of Figure 2, which shows the operation of a transmitting station 100 and a receiving station 200, Figures 1-4, the method comprising:

Transmitting a test packet (ATM cell) from a tester (transmitting station 100) in the transmitting portion of the network, such as wireless link of the network (18), where the ATM cell is stored in the transmit buffer 102 and is read out sequentially when requested, and then is transmitted from the transmitter 103 towards the Cable Modem Termination System (receiving station 200).

Receiving the packet (ATM cell) at the Cable Modem Termination System (receiving station 200), where the ATM cell is temporarily stored in a receive buffer 202, then, it is read out when requested, and is forwarded to a node 19 through an output means 203.

Returning packets from the Cable Modem Termination System (receiving station 200) to the tester (transmitting station 100) that do not have errors, disclosed as follows: In Figure 1, the receiving station 200 detects whether an ATM cell from the transmitting station 100 is successfully received or not. When it is successful, namely the packets do not have errors, the receiving station 200 forwards a positive response ACK, which shows the successful reception to the transmitting station 100.

Bypassing the tester's error checking and passing packets in the tester with errors, disclosed as follows: When ATM cell is failed, the receiving station 200 forwards a negative response NAK which shows the failed ATM cell to the transmitting station 100, then all the ATM cells in the group (including non-transmitted CPCS-PDU) including the failed ATM cell are discarded from the transmit buffer 102 of the transmitting station 100, also, see (S16), Figure 2.

The transmit cell management process 105 in the transmitting station 100 groups (STEP 10) a plurality of ATM cells of a packet (CPCS-PDU) by referring each fields (PT, VCI, VPI) in an ATM cell header, upon receipt of an ATM cell into the transmit buffer 102 through the terminal 15 or node 18, which can checking and identify the ATN cell packet is a test packet.

Regarding Claim 2, Umeuchi discloses determining the performance of the upstream portion of the network 18, Figure 4, which shows a flow of an ATM cell when a packet (PDU) having 8 ATM cells (C1 through C8) is transmitted from the terminal 15 to the node 19. Transmitting an ATM cell, transmitting station 100 in a radio module (RM) 12 and a receiving station 200 in a base station 11, Figure 4.

Regarding Claims 3, 4, Umeuchi discloses Block Error Rate (error detection means) in the receiving station, which detects whether a cell is received or lost by checking a sequence number of a received ATM cell, see Summary of the Invention.

Regarding Claim 5, Umeuchi discloses a cable network, Figure 11, showing a base station 11 coupled with radio modules 12-14 through a wireless channel. Each of radio modules 12-14 is connected to a related terminal equipment 15-17. Further, the base station 11 is coupled with the network 18 through an optical fiber, or a metal cable.

Regarding Claim 6, Umeuchi discloses transmits the signal in the upstream channel, Figure 4, which shows a flow of an ATM cell when a packet (PDU) having 8 ATM cells (C1 through C8) is transmitted from the terminal 15 to the node 19.

Regarding Claim 7, Umeuchi discloses the signal is returned in the forward channel of the cable network, using a communication channel between a transmitting station 100 and a receiving station 200, See Summary of the Invention.

Regarding Claim 8, Umeuchi discloses the destination is the Cable Modem Termination System (receiving station 200) in the base station 11, Figure 4.

Regarding Claim 9, Umeuchi discloses error correction such as forward error correction (FEC)

Regarding Claim 10, in view of the claim rejected under 35 U.S.C. 112, second paragraph, for examination purpose, the Examiner interprets that Umeuchi discloses repeating the method, by sending a plurality sequence of ATM cells, (step S17), where an EOP cell generated by the EOP cell generator 106 is transmitted to the receiving station 200. The EOP cell itself is an ATM cell, which has one bit (SDU type) set to 1 in a PT field in a cell header, Figure 2.

Regarding Claims 11, 12, Umeuchi discloses a test packet (PDU) 8 ATM cells (C1 through C8) inherently containing repeating pattern (C1-C8).

Regarding Claim 13, Umeuchi discloses errors in part of the packet, which are ignored if other portions of the packet contain the repeating test pattern, then all the ATM cells in the group (including non-transmitted CPCS-PDU) including the failed ATM cell are discarded from the transmit buffer 102 of the transmitting station 100, also, see (S16), Figure 2.

Regarding Claim 14, Umeuchi discloses a packet size pattern (C1-C8), which is the size of a test packet.

Regarding Claim 15, Umeuchi discloses packets (C1-C8), which are not discarded if they contain errors.

Response to Arguments

Applicant's arguments, see remarks, filed with the AMENDMENT on 10/21/2004, with respect to the rejection of claims 1-15 rejected under 35 U.S.C. 102(e) as being anticipated by Valk (US Patent No. 6,643,818) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Claims 1-15 rejected under 35 U.S.C. 102(e) as being anticipated by Umeuchi et al. (US Patent No. 6,512,747), as set forth in the present Office Action.

In response to Applicant's argument, the feature cited in the arguments, "to determine the location of where the errors may have occurred", must also be included in the claims for having patentability. Also, other features which are part of Applicant's arguments, such as "to determine in a measurement device the number of packets that have been lost in the upstream path between the cable modem and the cable modem termination system. Since normal pings cannot distinguish between packets lost in the upstream or downstream direction, the present invention allows the tester to distinguish between test packets lost in the upstream or downstream", must also be included in the claims for having patentability.

Generally, it is noted that the features upon which applicant relies in the arguments are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES C KERVEROS whose telephone number is (571) 272-3824. The examiner can normally be reached on 9:00 AM TO 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Date: 28 February 2005
Office Action: Final Rejection

By: 

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Art Unit 2133


GUY J. LAMARRE
PRIMARY EXAMINER